



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**CASE No. 93 OF 2014**

**FRANCIS VOSENA KIDIGA.....PLAINTIFF**

**VERSUS**

**BENSON OVUNDI.....1<sup>ST</sup> DEFENDANT**

**ALBERT KIPCHIRCHIR.....2<sup>ND</sup> DEFENDANT**

**ABDALLA RASHID.....3<sup>RD</sup> DEFENDANT**

**DAVID NYAMISOA ONGERE.....4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. By plaint dated 4<sup>th</sup> April 2014 and filed in court on 8<sup>th</sup> April 2014, the plaintiff averred that he bought two parcels of land both falling within the plot known as Miti Mingi/Mbaruk Block 3/4170 which was owned by Christina Chepkoskei who subsequently passed away before the plots could be transferred to him. The plaintiff further averred that the defendants blocked access to his aforesaid parcels by cultivating on a public pathway leading to the property and further destroyed his fence. He therefore sought judgment against the defendants for:

**a) A declaration that the plaintiff is the sole owner of two portions of land each measuring approximately 50x100 being part of land described as Miti Mingi/Mbaruk Block 3/4170 measuring approximately 0.458 Hectares.**

**b) A permanent injunction restraining the defendants by themselves, their employees, agents and any other person working under their authority from wasting, damaging, alienation, sale, removal, or disposition of the suit property or in any way interfering with the quiet and peaceful possession of the public pathway by the public and the plaintiff's parcel of land.**

**c) A temporary injunction restraining the defendants by themselves, their employees, agents and any other person working under their authority from wasting, damaging, alienation, sale, removal, or disposition of the suit property or in any way interfering with the quiet and peaceful possession of the public pathway by the public and the plaintiff's parcel of land.**

**d) General damages.**

**e) An award of such further and additional legal and equitable relief as the court deems just and proper.**

**f) Costs of this suit.**

**g) Interest in (d) and (f) herein above at court rates from the date of filing this suit.**

2. The defendants filed a statement of defence on 8<sup>th</sup> August 2014 in which they denied the plaintiff's title to the parcels of land and generally denied the plaintiff's allegations. They further stated that it was the plaintiff who was trying to create a road reserve where none existed.

3. Though served, the defendants did not attend the hearing of the case. As such, the plaintiff's evidence was not challenged either through cross examination or through opposing evidence.

4. The plaintiff testified in support of his case. He told the court that the plot known as Miti Mingi/Mbaruk Block 3/4170 was sold to him in portions by Christina Chepkoskei through a sale agreement dated 22<sup>nd</sup> August 2000 (PExb 1). He produced a copy of the title deed for Miti

Mingi/Mbaruk Block 3/4170 (PExb 2) and added that the vendor and even the vendor's sister assured him that the vendor did not have any children. He moved into the plot in the year 2000, fenced it and built a mud walled house. However, before he could complete fencing the area chief told him not to fence one side of the property as it was on the road. He further testified that the defendants entered the property and that the 2<sup>nd</sup> defendant was farming vegetables on it but he later stopped.

5. He added that as at the date of his testimony, the 2<sup>nd</sup> defendant was occupying part of the plot and that when the vendor passed away, the defendants buried her on part of the plot while he was away in hospital in the year 2009. He further stated that the 1<sup>st</sup> defendant built a nursery school on the road leading to the plot thus blocking his access and forcing him to use an access from a different plot. He therefore urged the court to order the 2<sup>nd</sup> defendant to vacate and further to order that the vendor's grave be removed from the plot.

6. The plaintiff's case was thereby closed. There being no appearance for the defendants, the defence case was also closed. I then gave directions that written submissions be filed and that the defendants' advocates on record be served with mention notice in respect of the date the matter was scheduled for mention to take date of judgment. Counsel for the plaintiff filed written submissions on 23<sup>rd</sup> May 2018. No submissions were filed by the defendants. Counsel for the defendants did not also attend court on the mention date.

7. Counsel for the plaintiff submitted that the plaintiff validly purchased Miti Mingi/Mbaruk Block 3/4170 from the deceased and fully paid the purchase price. He urged the court to find that the defendants had trespassed on the property and to grant the plaintiff the reliefs sought.

8. I have considered the pleadings, the evidence and submissions. The issues that emerge for determination are firstly whether the plaintiff is the owner of the properties and lastly whether the plaintiff is entitled to the reliefs sought.

9. As previously pointed out, the defendants did not challenge the plaintiff's evidence. On the basis of the evidence before the court, I am satisfied that Christina Rotich was the registered owner of Miti Mingi/Mbaruk Block 3/4170. This is manifest from the title deed that was produced as PExb 2.

10. The plaintiff contended that he entered into a sale agreement dated 22<sup>nd</sup> August 2000 (PExb 1) with one Christina Chepkoskei pursuant to which he purchased two portions of the said plot, each measuring "50x100". The agreement does not state whether the units of measurements were feet or meters or any other unit. Though the plaintiff insists that the vendor in the sale agreement is the same person as the registered proprietor, I note that the names are different. The registered proprietor according to the title deed was Christina Rotich while the vendor in the sale agreement was Christina Chepkoskei. No explanation was offered as to the discrepancies in names.

11. According to the plaintiff, the vendor who was and remains registered proprietor passed away before the portions which he purchased could be transferred to him. It must however be remembered that the plaintiff has not brought this suit against the vendor or her estate. The plaintiff has not told the court what steps he has taken to pursue his claim against the deceased's estate.

12. As a registered proprietor, the deceased and her estate are entitled to the rights and privileges accorded by **Sections 24 and 25** of the **Land Registration Act**. The sections provide as follows:

**24. Interest conferred by registration**

**Subject to this Act—**

**(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and**

**(b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.**

**25. Rights of a proprietor**

**(1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever.....**

13. Until such a time as the deceased's estate is distributed and the suit property is transferred to the plaintiff, the court is duty bound to accept the title deed as conclusive proof of ownership of the property. In view of the foregoing discussion, I find and hold that the plaintiff has failed to prove that he is the owner of the two portions said to have been sold to him. That settles the first issue.

14. Regarding the second and last issue, as to whether the plaintiff is entitled to the relief sought, I reiterate that the property is still registered in the name of Christina Rotich who according to the plaintiff is deceased. I cannot therefore declare the plaintiff as the owner of the two portions he claims to have bought as that would be the province of the court which will deal with administration of the deceased's estate.

15. The plaintiff also sought a permanent injunction to restrain the defendants by themselves, their employees, agents and any other person working under their authority from wasting, damaging, alienation, sale, removal, or disposition of the suit property or in any way interfering with the quiet and peaceful possession of the public pathway by the public and the plaintiff's parcel of land. Having failed to establish his claim over the properties, there would be no basis upon which to grant the permanent injunction sought.

16. Finally, the plaintiff sought general damages on account of trespass by the defendants. No specific quantum of general damages was given in submissions filed on behalf of the plaintiff. Since the plaintiff has failed to persuade the court that he owns the plots, he has not suffered any damage which would entitle him to compensation by way of general damages.

17. In the end, the plaintiff's case is dismissed. Since the case was not defended, I make no order on costs.

**Dated, signed and delivered in open court at Nakuru this 8<sup>th</sup> day of November 2018.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

No appearance for the plaintiff

No appearance for the defendants

Court Assistants: Gichaba & Lotkomoi